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DEPARTMENT OF JUSTICE AND CONSTITUTIONAL AFFAIRS  
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGESAKE



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Number of pages to be send 6 (including this page).

SUBJECT : SUBMISSIONS

MESSAGE : NO SUBMISSIONS FOR THE MEDIA AND ELECTORAL  
COMMITTEES AS THE PLANNING COMMITTEE EXPECTS  
DRAFT BILLS FROM THEM.

SIGNATURE

DATE

19/05/93

**INYANDZA NATIONAL MOVEMENT'S  
TO  
SUBMISSION ~~ON~~ THE TECHNICAL  
COMMITTEE ON TRANSITIONAL  
EXECUTIVE COUNCIL**

A transitional executive structure will be constituted by legislation agreed upon at the Multi-Party Forum. It will have a multi-party character vested with effective executive powers. The structure will include a council hereafter referred to as the Transitional Executive Council (TEC). The TEC will have sub-councils which will be given specific responsibilities in relation to areas of particular concern during stage one of the transition.

Regional governments will be considered to include provincial administration, self-governing territories and TBVC states which will have elected to co-operate and work within the transitional executive structure.

Provision will be made for the application of the following sub-councils:

1. Regional & Local government.
2. Finance.
3. Law and Order, Stability and Security.
4. Defence.
5. Foreign Affairs.
6. Elections.

**REGIONALISM**

The critical issue in any framework for regional government is the relationship between, on one hand, regional and central

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government and, on the other hand, regional and local government. Regional government will be empowered to exercise a law-making and executive power in relation to the areas listed hereunder, provided that regional legislation will have no force where it is repugnant to national laws. Accordingly, in regard to its legislative and executive powers, the central state shall have concurrent and overriding jurisdiction.

Regional governments shall have the powers to implement and administer national policy and legislation, when empowered by national legislation to do so. The areas designated as likely areas of regional government are the following:

- (i) the imposition of taxes in accordance with a national policy;
- (ii) education, other than tertiary education;
- (iii) health services, including hospitals;
- (iv) welfare;
- (v) housing;
- (vi) transport, including harbours, airports and roads;
- (vii) markets;
- (viii) works;
- (ix) traffic control;
- (x) environment;
- (xi) industrial and other development within the region;
- (xii) gambling;
- (xiii) town and regional planning;
- (xiv) imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws of the regions;  
and
- (xv) all other matters delegated to it by Acts of Parliament.

**REGIONAL POWERS****CONCURRENT AND OVERRIDING JURISDICTION**

The regions would be entitled to enact laws dealing with any aspect of the areas specified, provided that the provisions of such legislation are not repugnant to national legislation.

**ORIGINAL POWERS**

The powers of the regions will be original in the sense that they would be conferred on the regions by the constitution, not by statute or government.

**EXCLUSIVE JURISDICTION**

In respect of all matters not expressly specified the central state will have exclusive jurisdiction to make laws.

**DELEGATED POWERS**

The region will be able to administer and implement national policy where empowered to do so by national legislation which may delegate both legislative and executive functions even in respect of non-specified matters.

**RESIDUAL POWERS AT THE CENTRE**

The regions would not have any residual powers.

### **POWER TO COMPEL PERFORMANCE**

The central state can implement national policy within a region - even or especially when a region refuses to implement national policy when legislation authorises the regions to do so.

### **MULTI-LEVEL JURISDICTION OVER SPECIFIED MATTERS**

In relation to specified matters, all three levels of government may have legitimate interest and could perform some functions more appropriately than any of the other two levels. Thus in both Health as well as Education, there may be national policy regarding qualifications, access and funding. Regional government may be concerned with the locations of facilities and the management of resources. Local government/authorities are the appropriate bodies to regulate and supervise the provision of services by hospitals and schools. Indeed, there may be even a 4th level of function, e.g. those performed by parents at the level of the educational institution.

### **LOCAL GOVERNMENT**

There are two options here. On the one hand, it could be proposed that the law dealing with local government be in the form of a national statute. On the other hand, it may be possible to entrench local government in the constitution. This would protect some of their powers from the central state and the regions.

**FUNCTIONS DEEMED INAPPROPRIATE FOR REGIONAL GOVERNMENT**

The document presented at the South African Conference on Federalism places the administration of justice, law and order, mining, commerce, land and agriculture within the competence of regions. This is unacceptable. These are clearly matters which fall within the ambit of the central government.